

STATE OF CALIFORNIA

Arnold Schwarzenegger, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
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May 17, 2006

Robert Pieplow, Chief
Division of Construction
California Department of Transportation
P.O. Box 942874
Sacramento, CA 94274-0001

Re: Public Works Case No. 2005-028
Self-Generated Waste Program and
Highway Spill Program
California Department of Transportation

Dear Mr. Pieplow:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced projects under California's prevailing wage laws and is made pursuant to title 8, California Code of Regulations, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, my determination is as follows: regarding the Self-Generated Waste Program, only the sump-cleaning-related work of maintenance, off-hauling and testing is public work subject to the payment of prevailing wages; the remainder of the work involved in the Self-Generated Waste Program is not public work. Regarding the Highway Spill Program, none of the work is public work.

FACTUAL BACKGROUND

1. Self-Generated Waste Program of the California Department of Transportation ("Caltrans" or "DOT")¹

A. Sump-cleaning at Caltrans maintenance stations

Contractors collect, load, haul and dispose of hazardous liquid waste that is generated by maintenance activities performed by Caltrans employees. The waste includes petroleum hydrocarbons, water and sediment that gather in the floor sumps, grease sumps, wash rack clarifiers and lube rack sumps of the Caltrans maintenance stations. Contractors use either 55-gallon drums or vactor trucks with 110- to 130-barrel capacity to vacuum or pump

¹ Requests for bids for the Self-Generated Waste Program and the Highway Spill Program contracts have only been advertised recently. As such, the determination herein refers generally to "contractors" when referring to the scope of work.

out the waste from the pits and sumps, depending on the volume of waste to be collected. Contractors dispose of the waste at State-permitted Treatment, Storage and Disposal Facilities ("TSDFs"). When a new hazardous liquid waste is introduced at a maintenance station by a change in operations, Caltrans may require the contractors to obtain an analysis of the waste at a State-certified laboratory to determine a suitable waste removal plan.

Frequency of sump-cleaning varies from location to location depending on operational needs, sump design and percent solid ratio. Generally, sumps are cleaned on a quarterly basis. If sump-cleaning did not occur on a timely basis, Caltrans could be in violation of its storm water permit. Also, Caltrans work pits could overflow, causing safety concerns for Caltrans maintenance workers and impeding maintenance operations.

B. Solid waste collection at Caltrans maintenance stations

Caltrans maintenance workers discard solid hazardous waste items in DOT-approved containers at Caltrans maintenance stations. These waste items include used batteries, fluorescent light bulbs, empty containers of paint and other chemicals, unused paints, asphalt emulsions and absorbents contaminated with petroleum hydrocarbons. Contractors label, manifest and transport the containers to a TSDF for disposal in compliance with State and local regulations. The frequency of hauling depends on the amount of waste generated at a specific site and the allowed "accumulation period" as dictated by State law dealing with control of toxic substances. Failure to remove the waste within the accumulation period would constitute a regulatory violation; not collecting the containers would eventually compromise the mobility of Caltrans equipment.

Also, Caltrans employees remove tire scraps and guard rail wood waste from State highways using containers provided by the contractors. These Caltrans employees then deliver the containers to Caltrans maintenance stations for storage. Contractors transport the containers of tire scraps and wood waste to a TSDF for disposal. The hauling of tire waste occurs whenever a container is filled. The hauling of wood waste occurs within 90 days of storage according to the law governing disposal of treated wood waste.

C. Bio-waste collection at homeless camps on State rights-of-way

Bio-waste, including needles and sharps, is generated by homeless encampments located within State rights-of-way. Other entities are

responsible for placing the bio-waste in DOT-approved containers. Contractors in the Self-Generated Waste Program collect and haul DOT-approved containers from the homeless camp to a TSDF.

2. Highway Spill Program of Caltrans

Spills of various materials being transported in commerce along State highways occur on an unpredictable and accidental basis. These materials may include loads of bulk fuel or chemicals, packaged consumer commodities and, rarely, radioactive or other hazardous waste. In some instances, a party responsible for the spill arranges and pays for the spill clean-up. Where the responsible party is not on the scene, Caltrans utilizes its contractors in the Highway Spill Program to perform clean-up services.

When their services are needed, contractors provide labor, equipment and tools to collect, test, neutralize, haul and dispose of spilled materials. Where spilled material is not identifiable, testing would occur in order to determine the proper handling and disposal procedures. For testing purposes, contractors have access to State-certified laboratories to analyze the materials. Contractors do not perform pavement removal or repair activities. Other entities are responsible for those operations which require specific equipment and expertise. The spill clean-up work must be performed in compliance with State, federal and local hazardous waste laws and regulations. Contractors haul the collected spill material to a TSDF for disposal. Acceptable disposal sites are determined according to the distance to the spill site, the cost of disposal, TSDF acceptance criteria, and the contractors' existing TSDF accounts.

ANALYSIS

Labor Code section 1771² requires the payment of prevailing wages to all workers employed on public works. "Public works" is defined, in pertinent part, by reference to section 1771. (Cal. Code Regs., tit. 8, § 16000.) Section 1771 is applicable to contracts let for maintenance work. Under California Code of Regulations, title 8, section 16000, section 1771 "maintenance" includes:

- (1) Routine, recurring and usual work for the preservation, protection and keeping of any publicly

²All statutory references are to the California Labor Code, unless otherwise indicated.

owned or publicly operated facility (plant, building, structure, ground facility, utility system or any real property) for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired.

Under section 1720.3, a public work also includes "the hauling of refuse from a public works site to an outside disposal location, with respect to contracts involving ... any political subdivision of the state."

Section 1772 states: "Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work." Sections 1771 and 1774 have similar requirements.

In PW 2005-007, *Street Sweeping, City of Santa Clarita* (June 1, 2005), the Director set forth the following dictionary definitions to explain what constitutes "maintenance" under section 16000: To "preserve" means to protect, keep up, maintain. To "protect" means "to shield from injury, danger or loss," guard, defend. To "keep" means to "maintain in good order or condition."

The State highways and the Caltrans maintenance stations are publicly owned and/or operated facilities within the meaning of the maintenance regulation for purposes of analyzing coverage under section 1771. The issue presented is whether the types of work performed under the Self-Generated Waste and Highway Spill Programs fall under section 1771 (maintenance), section 1720.3 (off-hauling) or are otherwise subject to prevailing wage requirements under sections 1771, 1772 and 1774.

1. Self-Generated Waste Program

A. Sump-cleaning

Approximately every calendar quarter, contractors travel to Caltrans maintenance stations with vacuum trucks and remove hazardous liquid waste from floor sumps, hydraulic hoist pits and wash rack clarifiers. Failure to clean these facilities in a timely fashion would impede maintenance operations, violate Caltrans' storm water permit and create safety concerns for Caltrans maintenance workers. In that sense, the sump-cleaning is meant to preserve, protect and keep Caltrans' facilities for their intended purposes in a safe and continually usable condition. While the frequency of sump-cleaning varies from location to location, in general it occurs on a quarterly basis and hence is

performed on a "routine, recurring and usual" basis. Accordingly, the sump-cleaning meets the definition of maintenance and therefore is public work within the meaning of section 1771 and California Code of Regulations, title 8, section 16000.

The liquid waste is being hauled from a site where the public work of maintenance is being performed to a disposal facility. Therefore, the hauling of the liquid waste constitutes "the hauling of refuse from a public works site to an outside disposal location" within the meaning of section 1720.3.

That the removal and hauling of liquid waste under the Self-Generated Waste program is covered public work finds further support in PW 2001-005, *Trash/Debris Removal from Railroad Rights-of-Way and Facilities, Blue and Green Lines, Los Angeles County Metropolitan Transportation Authority* (August 8, 2001). There, the removal of refuse and debris from rail facilities was a covered public work under section 1771 because the work was the routine and continual removal of debris to keep the rail system safe and usable. The hauling of debris in that case was a public work under section 1720.3 because it constituted the hauling of refuse from a public works site.

Regarding the testing of hazardous liquid wastes performed in connection with sump-cleaning and off-hauling, that work, when undertaken, is done as part of the maintenance process to determine an appropriate hazardous waste removal plan. Consequently, the testing activities are also subject to the payment of prevailing wages as work performed as part of the maintenance process within the meaning of sections 1771, 1772 and 1774.

B. Solid waste collection at Caltrans stations

As for solid waste generated by Caltrans maintenance activities such as used batteries, fluorescent light bulbs and empty containers of paint and other chemicals, Caltrans employees first place the waste in containers at the maintenance stations. Similarly, Caltrans employees gather tire scraps and wood waste from the highways and place them in containers that are stored at Caltrans stations. Depending on the rate at which waste is generated and the containers fill up, contractors later collect the containers for disposal at TSDFs. Under this arrangement, the contractors' collection of containers of solid waste does not affect the safe operation of the maintenance station as happens with the sump-cleaning, where the pits, sumps and clarifiers being maintained are actual physical parts of the maintenance station.

Accordingly, the contractors' collection of containers of solid waste is not done for the purpose of "preservation, protection and keeping" of Caltrans' buildings or facilities and, therefore, the collection of the containers is not maintenance within the meaning of section 1771 and the maintenance regulation. Since the solid waste collection work is not maintenance, the off-hauling of these containers does not constitute hauling of refuse from a public works site within the meaning of section 1720.3.

C. Bio-waste collection at homeless camps

Under the Self-Generated Waste Program, contractors also collect containers of bio-waste at homeless encampments that already have been packaged. Failure to collect the containers does not impact the safe operation of the highway system. As such, the collection of bio-waste containers cannot be said to preserve, protect, or keep the public highways or any other Caltrans facility. Therefore, the collection of bio-waste is not maintenance within the meaning of section 1771 and the maintenance regulation, and the off-hauling of the containers is not hauling of refuse from a public works site under section 1720.3.

2. Highway Spill Program

Under the Highway Spill Program, contractors clean-up, test, neutralize, haul and dispose of hazardous materials upon the occurrence of spills on State highways. By their nature, spills cannot be predicted in terms of timing, location or amount. For that reason, the work is not of a "routine, recurring and usual" nature. Accordingly, the clean-up work in the Highway Spill Program does not constitute "maintenance" under section 1771 and the maintenance regulation. Because the clean-up work itself is not public work, the testing of the hazardous materials from the spill site is not subject to prevailing wages under any statutory section. Similarly, the off-hauling of the hazardous materials from the highway spill sites does not constitute hauling of refuse from a public works site under section 1720.3.

CONCLUSION

To summarize, only the sump-cleaning-related work of maintenance, off-hauling and testing under the Self-Generated Waste Program is public work subject to the payment of prevailing wages. The remainder of the work performed under both the Self-Generated Waste Program and the Highway Spill Program is not public work and therefore is not subject to the payment of prevailing wages.

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I hope this determination satisfactorily answers your inquiry.

Sincerely,

A handwritten signature in dark ink, appearing to read "John M. Rea", written over the word "Sincerely,".

John M. Rea
Acting Director